U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-A-V-A-

DATE: JULY 29, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an elementary school teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner received a master of education degree from [redacted] in 2010. The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

On appeal, the Petitioner states: "Since October 2005, I have been a public elementary school teacher at [redacted] assigned to [redacted] . . . ." She believes the Director committed "egregious error" by "shifting [the] characterization of her job title and attributing an argument to her that she did not make. We acknowledge that some statements in the Director's decision erroneously refer to the Petitioner as a "special education teacher" and a "mathematics teacher," but these statements do not undermine the Director's grounds for denial. For example, when discussing the first, second, and third prongs of the *NYSDOT* analyis, the Director correctly identified the Petitioner multiple times as an "elementary school teacher." In addition, while the Petitioner notes that she did not claim "a shortage of qualified U.S. workers" in her field as indicated in the Director's decision, we do not find this to constitute a critical error that would invalidate the director's decision.

A. Substantial Intrinsic Merit

The Petitioner submitted documentation showing that her work as an elementary school teacher for [redacted] is in an area of substantial intrinsic merit. For example, the record included information concerning the No Child Left Behind Act (NCLBA), the U.S. Department of Education's "Race to the Top" program, and the Elementary and Secondary Education Act "Blueprint for Reform." These governmental initiatives reflect the importance of improving public education and demonstrate that the Petitioner works in a meritorious occupation. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Director found that the proposed benefit of the Petitioner's work as a school teacher with [redacted] would not be national in scope. With regard to the Petitioner's teaching duties at [redacted] there is no evidence establishing that the benefits of her work would extend beyond her students and school district such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the Petitioner has not shown the impact of her work as an elementary school teacher beyond [redacted] and, therefore, that her proposed benefits are national in

scope. There is no documentary evidence indicating that her work at [redacted] will produce national benefits in the field of elementary education.

In the appellate brief, the Petitioner mentions *NYSDOT* at 217, n.3 regarding the limited scope of elementary school teachers and argues that "[t]he architecture of the national educational interest overrides this characterization of a schoolteacher's impact." The Petitioner contends that "[a] teacher's effective frontline role in advancing, promoting and serving the national educational interest of raising student proficiency and closing achievement gaps has an impact that is national in scope." However, there are no blanket national interest waivers for effective foreign educators working to improve student performance in U.S. schools where achievement gaps exist. USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *Id.* at 217. The Petitioner also points to the NCLBA framework and various federal and state initiatives aimed at "closing achievement gaps between minority and non-minority students, and between disadvantaged and more advantaged children." The existence of federal statutes (such as the NCLBA) and other U.S. government programs relating to educational reform do not lend national scope to the work of an individual teacher. The importance of qualified teachers to U.S. national educational initiatives is collective rather than specific to the Petitioner.

The Petitioner also quotes several passages from the NCLBA and related policy communications such as the *Elementary and Secondary Education Act Blueprint for Reform*, but none of these materials discuss the national interest waiver. For instance, the NCLBA does not contain any immigration provisions and does not mention the national interest waiver in any context.

Additionally, the Petitioner discusses [redacted] demographics and their progress in meeting Annual Measurable Objectives for reading as measured by the Maryland School Assessment, Scholastic Reading Inventory, and Partnership for Assessment of Readiness for College and Career tests. The Petitioner argues that her "success in raising student achievement . . . , however seemingly localized in scope, has a ripple effect on the nation at large. . . . [redacted] success helped [redacted] narrow the pernicious achievement gaps between higher- and lower-performing student subgroups." Improved test results from one school do not establish that the Petitioner's work is having "a ripple effect on the nation at large." While the Petitioner has provided assessment data indicating that she contributed to her school's progress in reading, there is no evidence reflecting that her work for [redacted] has had, or will have, a national effect.

The Petitioner acknowledges *NYSDOT*'s finding that the impact of a single school teacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement. *Id.* at 217, n.3. With regard to following the guidelines set forth in *NYSDOT*, the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act. There is no indication that the NCLBA modified or superseded *NYSDOT*, and the Petitioner identifies no specific legislative or regulatory provisions that exempt elementary school teachers from *NYSDOT* or reduce its impact on them. The record does not show how the Petitioner's work as a teacher at [redacted] will affect

the field beyond As the Petitioner has not demonstrated the national scope of her work for she does not meet the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

On appeal, the Petitioner states that the written testimonials portray her "effectiveness in advancing, promoting, and serving the national educational interest of the United States." The Petitioner previously submitted letters of support from staff and administrators who worked with her at in the Philippines and and from her students' parents and a grandparent. The references attested to the Petitioner's talent, dedication, and contributions to her schools, but they did not indicate that she has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT.*

For example, the Petitioner provided a letter of support from principal at stating: "Since 2010, [the Petitioner] has been teaching sixth grade Science and Reading/Language Arts and serving as point person for sixth grade Science." further indicated: "[The Petitioner] does all things in the best interest of her students. She is well versed in a variety of pedagogical strategies that meet the needs of the diverse population she serves. She is consistently innovative in her teaching style." also discussed the Petitioner's teaching qualifications and mentioned that she played a role in improving Maryland School Assessment test scores at but did not describe how the Petitioner's work has affected the field as a whole.

Another reference, principal of mentioned that she oversaw the Petitioner's work as a member of the One of that team's tasks is "to examine what is happening to cause a decline in student achievement" when they move from elementary school to middle school. Regarding the Petitioner's specific contributions to the team, stated:

> The work that [the Petitioner] has done includes participating in lesson planning with middle school teachers in order for them to begin fusing activities that will engage students more as well as increase the rigor. She also participated in Learning Walks to observe the lessons planned in order to provide feedback to the middle school teachers and have open discussion about work that could be done in elementary school to better prepare students for the curriculum. Lastly, [the Petitioner] modeled for middle school teachers the three group reading rotation.

Furthermore, explained that "[t]he impact of [the Petitioner's] work is that the middle school now regularly practices a three group rotation on a daily basis," but she did not indicate how the Petitioner's work on the team has affected teaching practices outside of or has otherwise influenced the field as a whole.

The Petitioner states that she "played a frontline role in Maryland's Race to the Top program" through participation in the Maryland State Department of Education (MSDE) Educator Effectiveness Academies and the MSDE Teacher Evaluation Pilot Program. The Educator Effectiveness Academies offer professional development to teachers transitioning to the Maryland Common Core state curriculum. In addition, the MSDE Teacher Evaluation Pilot Program concerns the implementation of new teacher and principal evaluation systems that include measures of professional practice and student growth. The Petitioner does not explain how her participation in the aforementioned MSDE programs has influenced the field of elementary education. Whatever the Petitioner's specific role in these programs, their impact remains local.

With regard to her previous high school teaching experience in the Philippines, the Petitioner states: "During my nine-year stint at I co-authored a three-part Social Studies textbook on Philippine History, Asian History and World History, and authored a companion teacher's manual." The record shows that published the Petitioner's textbooks in Filipino between 2000 and 2006, and in English translations between 2006 and 2013. The second book in the series received the "Special Citation" in 2002 from the While the aforementioned award may demonstrate that the Petitioner co-authored a quality textbook, she has not demonstrated that the textbook or the "Special Citation" is indicative of her influence on the field as a whole.

The Petitioner contends that her "textbooks have been cited as reference in other works." A review of the play from the web magazine published at the time by the includes a footnote identifying the Petitioner's textbook but the context for this reference is not evident. The review does not identify the part of the text to which the footnote relates. Furthermore, the only exhibit to include a scholarly discussion of the Petitioner's books is a proof copy of ' an essay from (English title: The article analyzed several textbooks, including two of the Petitioner's volumes, to compare how textbooks in the United States and in the Philippines treated "[t]he American occupation of the Philippines from 1898 to 1946." There is no documentary evidence showing that the Petitioner's textbooks have been frequently cited by educational scholars or have otherwise influenced the field as a whole.

The submitted documentation shows that the Petitioner co-authored high school textbooks while she taught social studies in the Philippines. She has not demonstrated her involvement in comparable activities since she began teaching elementary school students in the United States in October 2005, eight and a half years before filing the present petition, such as to establish that her work as an author of textbooks has had an impact on the educational field.

The Petitioner also provided copies of her "satisfactory" performance evaluations from [redacted] The Petitioner, however, does not indicate how the submitted evaluations demonstrate that she has influenced the field to a substantially greater degree than other similary qualified elementary school teachers and how her specific work has had significant impact outside of [redacted]

The record reflects that the Petitioner is a well-qualified and effective educator at [redacted] For example, the references' statements and the Maryland School Assessment and Scholastic Reading Inventory data reflect that she has contributed to her school's progress in reading. The documentation provided, however, does not establish that the Petitioner's work as an elementary school teacher has affected the field as a whole. Accordingly, the Petitioner has not established that she meets the third prong of the *NYSDOT* national interest analysis.

III. CONCLUSION

Considering the letters of support and other evidence in the aggregate, the Petitioner has not shown that the proposed benefits of her work are national in scope. In addition, the Petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement. The record does not establish that the Petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, she "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-V-A-*, ID# 17461 (AAO July 29, 2016)